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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,659	09/15/2003	John Buiatti		1866
26387	7590	06/26/2007		
W. NORMAN ROTH 523 W. 6TH STREET SUITE 707 LOS ANGELES, CA 90014			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 06/26/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/662,659

Applicant(s)

BUIATTI, JOHN

Examiner

Melanie J. Hand

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7-11,16,17,19,20 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 12-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 7-11, 16, 17, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's arguments regarding the rejection of claims 10 and 11: Applicant argues that Larsson teaches away from the use of nipple extenders. This is not persuasive because, as applicant acknowledges, Larsson teaches that, although the instant device does not require inserts or adapters, they may still be used.

In response to applicant's argument that the devices of Larsson and Beer are breast pumps and thus do not render the claimed invention unpatentable, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Applicant is reminded that it is the cups, not the entire devices, taught by Larsson and Beer that are cited as rendering the claimed invention unpatentable, not the pump portion. The respective hoods or cups of Larsson and beer are removable, separate entities and thus can be used to naturally feed babies and are considered herein to be adapted to be grasped by the mouth of an infant.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al (U.S. Patent Application Publication No. 2002/0062103) in view of Beer et al (U.S. Patent No. 4,799,922).

With respect to **claim 1**: Larsson teaches a nursing system comprising: a breast cup 1 having a concave portion (i.e. the hood portion) for receiving a female human breast, said cup 1 having a hollow generally cylindrical nipple receiving portion 5. The nipple-receiving portion 5 taught by Larsson is adapted to be grasped by the mouth of an infant. The nipple receiving portion 5 is located on and projecting away from said concave portion, said nipple receiving portion 5 having a milk delivery aperture in an end remote from said concave portion. A generally cylindrical nipple extender is receivable in said nipple receiving portion 5. The extender is sized and configured to occupy space in said nipple receiving portion 5 not occupied by a human nipple. Tubular shaped extension 17 functions as a flow channel for milk expressed from the breast to be delivered to the milk receptacle. ('103, ¶¶ 0001, 0021, 0027)

Larsson does not teach that the axial length of said extender is less than an axial length of said nipple receiving portion 5. Beer teaches a nursing system having a nipple-receiving portion 112 that in turn has a nipple extender 147 (part of insert 14) that is axially slidably receivable in said nipple receiving portion 112 (Col. 6, lines 16-19), said nipple extender 147 having an axial length less than an axial length of said nipple-receiving portion 112 (as can be seen in Fig. 1B), said extender 147 being sized and configured to occupy space in said nipple receiving portion 112 not occupied by a mother's nipple (as can also be seen in Fig. 1B). Beer teaches that such remaining space in portion 112 facilitates a temporary reduction in, and control of, ambient pressure against the user's nipple ('922, Col. 5, lines 41-47), thus it would be obvious to one of ordinary skill in the art to modify the device of Larsson so as to have nipple

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extenders whose axial lengths are less than the nipple-receiving portions they engage as taught by Beer to facilitate reduction and control of ambient pressure in the void space (excess volume) of portion 112 beyond the end of the extender.

With respect to **claim 7**: Larsson teaches a flexible material for cup portion 1, but does not explicitly teach a flexible elastomeric material. Beer, specifically insert 14, is formed of flexible elastomeric material. (Col. 6, lines 3-5) The motivation to combine the teachings of Larsson and Beer is stated *supra* with respect to claim 1.

With respect to **claim 10**: Larsson teaches a nursing system comprising: a series of breast cups 1 each having a concave portion (hood portion) for receiving a female human breast, said cups 1 each having a hollow generally cylindrical nipple receiving portion 5. The nipple-receiving portion 5 taught by Larsson is capable of being grasped by the mouth of an infant, thus satisfying the relevant limitation in claim 1, as the phrase "for grasping by the mouth of an infant" constitutes functional language that is given little patentable weight herein. The nipple receiving portion 5 is located on and projecting away from said concave portion, said nipple receiving portions 5 of said series of cups 1 are of different lengths and each portion has a milk delivery aperture in an end remote from said concave portion. A series of generally cylindrical nipple extenders are each receivable in said nipple receiving portions 5. The extenders are each differently sized to occupy substantially all space in said nipple receiving portions 5 not occupied by a human nipple, as Larsson teaches that the lengths of nipple receiving portions 5 vary. Tubular shaped extension 17 functions as a channel for milk expressed from the breast to be delivered to the milk receptacle. ('103, ¶¶ 0001, 0021, 0027)

Larsson does not teach that the axial lengths of said extenders are less than an axial length of said nipple receiving portions 5. Beer teaches a nursing system having a nipple-receiving portion 112 that in turn has a nipple extender 147 (part of insert 14) that is axially slidably receivable in said nipple receiving portion 112 (Col. 6, lines 16-19), said nipple extender 147 having an axial length less than an axial length of said nipple-receiving portion 112 (as can be seen in Fig. 1B), said extender 147 being sized and configured to occupy space in said nipple receiving portion 112 not occupied by a mother's nipple (as can also be seen in Fig. 1B). Beer teaches that such remaining space in portion 112 facilitates a temporary reduction in, and control of, ambient pressure against the user's nipple ('922, Col. 5, lines 41-47), thus it would be obvious to one of ordinary skill in the art to modify the device of Larsson so as to have nipple extenders whose axial lengths are less than the nipple-receiving portions they engage as taught by Beer to facilitate reduction and control of ambient pressure in the void space (excess volume) of portion 112 beyond the end of the extender.

With respect to **claim 11**: Larsson teaches a flexible material for cup portion 1, but does not explicitly teach a flexible elastomeric material. Beer teaches that said cup 11, specifically insert 14, is formed of flexible elastomeric material. (Col. 6, lines 3-5) The motivation to combine the teachings of Larsson and Beer is stated *supra* with respect to claim 1.

Claims 8, 9, 16, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al (U.S. Patent Application Publication No. 2002/0062103) in view of Beer et al (U.S. Patent No. 4,799,922) as applied to claims 1, 7, 10 and 11 above, and further in view of Han (U.S. Patent No. 6,213,840).

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With respect to **claim 8**: The combined teaching of Larsson and Beer teaches a milk delivery aperture in the form of passages forming holes in an end wall, but does not teach that said milk delivery aperture comprises slit means extending through said end of said nipple-receiving portion to provide a normally closed milk delivery aperture. Han teaches a hands-free breast pump supporting bra and system that comprises a bra having slits located in the region of each nipple to accommodate a funnel from a suction source. ('840, Col. 2, lines 37-39) Since the devices of the combined teaching of Larsson and Beer and Han seek to solve a similar problem in the art, it would be obvious to one of ordinary skill in the art to modify the device of the combined teaching of Larsson and Beer to have a milk delivery aperture that comprises a slit means to provide a normally closed aperture as taught by Han.

With respect to **claim 9**: Han teaches that these slits may be horizontal and/or vertical or any shape that accommodates said funnel, which includes crossed slits that are horizontal and vertical. ('840, Col. 2, lines 43-50) the motivation to combine the devices of the combined teaching of Larsson and Beer is stated *supra* with respect to claim 8.

With respect to **claim 16**: The combined teaching of Larsson and Beer does not teach milk delivery apertures comprising slit means extending through said ends of said nipple receiving portions to provide normally closed milk delivery apertures. Han teaches a hands-free breast pump supporting bra and system that comprises a bra having slits located in the region of each nipple to accommodate a funnel from a suction source. ('840, Col. 2, lines 37-39) Since the devices of Beer and Han seek to solve a similar problem in the art (i.e. provide a portable breast pumping device), it would be obvious to one of ordinary skill in the art to modify the device of the

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combined teaching of Larsson and Beer to have a milk delivery aperture that comprises a slit means as taught by Han to provide a normally closed aperture.

With respect to **claim 17**: Han teaches that these slits may be horizontal and/or vertical or any shape that accommodates said funnel, which includes crossed slits that are horizontal and vertical. ('840, Col. 2, lines 43-50) The motivation to combine the teachings of Larsson and Beer and Han is stated *supra* with respect to claim 16.

With respect to **claim 19**: Larsson teaches a nursing system comprising: a breast cup 1 having a concave portion (i.e. the hood portion) for receiving a female human breast, said cup 1 having a hollow generally cylindrical nipple receiving portion 5. The nipple-receiving portion 5 taught by Larsson is adapted to be grasped by the mouth of an infant. The nipple receiving portion 5 is located on and projecting away from said concave portion, said nipple receiving portion 5 having a milk delivery aperture in an end remote from said concave portion. A generally cylindrical nipple extender is receivable in said nipple receiving portion 5. The extender is sized and configured to occupy space in said nipple receiving portion 5 not occupied by a human nipple. Tubular shaped extension 17 functions as a flow channel for milk expressed from the breast to be delivered to the milk receptacle. ('103, ¶¶ 0001, 0021, 0027)

Larsson does not teach that the axial lengths of said extenders are less than an axial length of said nipple receiving portions 5. Beer teaches a nursing system having a nipple-receiving portion 112 that in turn has a nipple extender 147 (part of insert 14) that is axially slidably receivable in said nipple receiving portion 112 (Col. 6, lines 16-19), said nipple extender 147 having an axial length less than an axial length of said nipple-receiving portion 112 (as can be seen in Fig. 1B), said extender 147 being sized and configured to occupy space in said



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nipple receiving portion 112 not occupied by a mother's nipple (as can also be seen in Fig. 1B). Beer teaches that such remaining space in portion 112 facilitates a temporary reduction in, and control of, ambient pressure against the user's nipple ('922, Col. 5, lines 41-47), thus it would be obvious to one of ordinary skill in the art to modify the device of Larsson so as to have nipple extenders whose axial lengths are less than the nipple-receiving portions they engage as taught by Beer to facilitate reduction and control of ambient pressure in the void space (excess volume) of portion 112 beyond the end of the extender.

The combined teaching of Larsson and Beer does not teach a normally closed milk delivery aperture at said end. Han teaches a hands-free breast pump supporting bra and system that comprises a bra having slits located in the region of each nipple to accommodate a funnel from a suction source. ('840, Col. 2, lines 37-39) Since the devices of the combined teaching of Larsson and Beer and Han seek to solve a similar problem in the art (i.e. provide a portable breast pumping device), it would be obvious to one of ordinary skill in the art to modify the device of the combined teaching of Larsson and Beer to have a milk delivery aperture that comprises a slit means as taught by Han to provide a normally closed aperture.

With respect to **claim 20**: The extender 147 taught by Beer is sized and configured to occupy most of the space in said nipple receiving portion not occupied by a mother's nipple. ('922, Fig. 1B) The motivation to combine the teachings of Larsson and Beer and Han is stated *supra* with respect to claim 19.

***Allowable Subject Matter***

Claims 3-5 and 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

June 20, 2007

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read 'Tatyana', written over the printed name and title.